KRISHNASAMY JAYARAMAN & ANOR
v. KEMENTERIAN KESIHATAN MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
SU TIANG JOO J
[CIVIL SUIT NO: WA-21NCVC-123-12-2020]
7 NOVEMBER 2025

Abstract – *In cases where liability for severe, life-altering injuries (such as multiple amputations) resulting from medical negligence by public hospital personnel is conceded, the court may quantify damages to provide the injured party with comprehensive compensation encompassing: (i) non-duplicative general damages for the specific physical injuries and associated mental distress; and (ii) special damages covering all necessary future costs for life-long rehabilitation, including advanced prosthetics, specialised equipment, modifications for independent living, and temporary caregiver assistance, all calculated to restore the claimant as closely as possible to their pre-injury condition.*

TORT: *Negligence – Medical negligence – Damages – Assessment – Claimant healthy teenager – Claimant admitted to Government hospital for severe scrotal infection – Claimant given inconsistent diagnoses and treated with multiple unnecessary medications – Claimant discharged but later collapsed at home and re-admitted – Inotropes mistakenly administered through peripheral vein in hand instead of central line in neck – Administration of inotropes caused gangrene, leading to series of amputations – Quantum of damages to be awarded*

The second plaintiff, a healthy 15-year-old teenager with no chronic illness, was admitted to the Ampang General Hospital ('hospital') for severe scrotal infection. There, he was inconsistently diagnosed and treated with multiple antibiotics and antivirals despite there being no clear confirmation of any diagnosis. The second plaintiff was discharged three days later with a diagnosis of hypospadias. Such diagnosis, however, was not signed off in his discharge papers by any specialist. Five days later, the second plaintiff collapsed at home and was re-admitted. He fell into a coma and, whilst there, inotropes were to be administered through his peripheral vein through a central line in his neck. Instead, it was administered through his peripheral vein in his hand, causing swelling and peripheral gangrene of both his hands and his left leg. The first plaintiff, who was the father of the second plaintiff, was given inconsistent explanations. The second plaintiff's condition continued to worsen despite various referrals to several doctors, and he suffered immense pain, disability and further medical complications. In the following months, the second plaintiff underwent a series of amputations due to the presence of gangrene caused by the administration of inotropes. His left hand up to the elbow, right leg just below the knee and his left toes were

amputated. The second plaintiff's left foot sole was debrided, and he had to undergo a corrective surgery on his right leg stump as it had not healed properly. During this period, he was also placed on 480 days of *tuberculosis* medication which further compromised his immune system although there was no positive test that he had *tuberculosis*. The second plaintiff was referred to rehabilitation hospitals for physiotherapy and psychological treatments, but the damage was irreparable. A later meeting with the Deputy Director of the hospital confirmed that there was indeed an error in administering the inotrope dose, which was the root cause of his life-altering injuries. Hence, the plaintiffs claimed against the defendants for negligence in the medical treatment and care provided to the second plaintiff at the hospital. Liability was conceded with judgment entered against the Government of Malaysia, grounded on vicarious liability with the claims against all the other defendants struck out. Therefore, the court was tasked to carry out the assessment of damages.

Held (awarding plaintiffs total quantum of RM7,400,883.19 for damages as tabulated in para. [155] of judgment):

(1) The second plaintiff was awarded: (i) RM80,000 for his right trans-tibial amputation; (ii) RM70,000 for his left trans-radial amputation; (iii) RM5,000 for the debridement of his left foot sole; (iv) RM40,000 for the amputation of the toes of his left foot; and (v) RM18,000 for the corrective surgery to his right leg stump. The second plaintiff's claim for pain and suffering for the four major operations was not allowed as the awards for the four amputations had taken into account his pain and suffering. (paras 17-27 & 155)

(2) Taking into account all the mental, physical, cognitive and behavioural disorders and to give a deduction for any duplicity in physical disorders, the second plaintiff was awarded RM85,000. (paras 30 & 155)

(3) A sum of RM80,000 was to be provided for the second plaintiff's claim for erectile dysfunction. Further, with the second plaintiff being still young at 22 years of age, he could be first treated with medication and as each pill costs RM15, the court allowed a sum of RM15 per pill x 2 per week x 48 years, which amounted to RM74,880. The court also allowed the claim for penile prosthesis implantations of RM140,000. (paras 55, 58, 61 & 155)

(4) The claims sought by the plaintiffs for the prosthetics, in the sum of RM6,434,266.79, for the three items required by the second plaintiff to be put in a position as close as possible to his position prior to the mishaps suffered by him whilst undergoing treatment by the personnel and institutions employed and run by the defendants were allowed. (paras 75 & 155)

(5) The following sums were awarded: (i) RM450 for a lumbar corset; (ii) RM13,200 (RM1,200 x 11 replacements) for a firm mattress; (iii) RM5,000 for a one-off normal wheelchair to allow the second plaintiff time to adjust to the use of the prosthetics; (iv) RM12,000 for one-off anti-gravity chair; (v) RM10,000 for modified washroom with accessories, as a one-off claim without the maintenance costs as it could be used by the other members of the family too; and (vi) RM20,000 for modified steering wheel. (paras 85, 87, 101, 107, 110 & 155)

(6) The second plaintiff was obviously dependent upon the first plaintiff for his daily needs and was a source of comfort to the second plaintiff for the mishaps that had befallen him and thus, a claim for someone to care for him for a period until the second plaintiff had become accustomed to his new prosthetics and become more independent would be reasonable. A period of five years would be more than sufficient. The court accepted the costs for the home care to be RM3,000. With a multiplier of five years, it would amount to RM3,000 x 12 months x five years, which would amount to RM180,000. (paras 135 & 155)

(7) The court awarded the plaintiffs: (i) special damages in the amount of RM113,086.40; (ii) aggravated damages in the amount of RM20,000; and (iii) costs of RM200,000. (paras 141, 145, 154 & 155)

Case(s) referred to:

Chong Nge Wei & Ors v. Kemajuan Masteron Sdn Bhd [2022] 4 CLJ 833 FC ***(refd)***

Chua Kay Hock & Anor v. Lee Hoon Poi [2022] 7 CLJ 669 CA ***(refd)***

Dato' Stanley Issacs (Suing By Himself And As The Administrator Of The Estate Of To' Puan Suzanne Thomas, Deceased) v. The Government Of Malaysia & Ors [2019] 1 CLJ 626 HC ***(refd)***

Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor And Another Appeal [2018] 3 CLJ 427 FC ***(refd)***

Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors [1993] CLJU 103; [1993] 1 LNS 103 HC ***(refd)***

Farah Ahmed Naji Al-Sahhaf v. Dr Lee Weng Seng & Ors [2022] CLJU 3340; [2022] 1 LNS 3340 HC ***(refd)***

Hasniyati Hassan & Anor v. Kerajaan Malaysia [2022] 7 CLJ 565 HC ***(refd)***

Iftikar Ahmed Khan v. Perwira Affin Bank Bhd [2018] 1 CLJ 415 FC ***(refd)***

Inas Faiqah Mohd Helmi (A Child Suing Through Her Father And Next Friend; Mohd Helmi Abdul Aziz) v. Kerajaan Malaysia & Ors [2016] 2 CLJ 885 FC ***(refd)***

Iqbal Idlan Khalek lwn. Zarina Mohd Zaman [2024] SMCU 77 SC ***(refd)***

Kasirin Kasmani v. The Official Administrator & Anor [1991] 3 CLJ 2498; [1991] 2 CLJ (Rep) 800 HC ***(refd)***

Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals [2018] 1 CLJ 585 FC ***(dist)***

Lim Poh Choo v. Camden and Islington Area Health Authority [1980] AC 174 ***(refd)***

Marappan Nallan Koundar & Anor v. Siti Rahmah Ibrahim [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174 SC ***(refd)***

Muhammad Azran Mazlan lwn. Tan Thong Hock & Satu Lagi [2021] SMCU 135; [2021] 5 LNS 135 SC ***(refd)***
Noor Syazwani Zabri & Anor v. Tan Huen Man [2017] MLJU 2336 ***(refd)***
Nurul Husna Muhammad Hafiz & Anor v. Kerajaan Malaysia & Ors [2015] 1 CLJ 825 HC ***(refd)***
Nurul Iman Abu Mansor v. Gleneagles Hospital Kuala Lumpur Sdn Bhd & Anor [2025] 2 CLJ 824 HC ***(refd)***
Ong Ah Long v. Dr S Underwood [1983] 2 CLJ 198; [1983] CLJ (Rep) 300 FC ***(refd)***
Rookes v. Barnard [1964] AC 1129 ***(refd)***
Sargunan Tannimalai v. Abdul Mutalib Khamis & Anor [2011] PILRU 113 ***(refd)***
Sia Hiong Tee & Ors v. Chong Su Kong & Ors [2015] 8 CLJ 1173 FC ***(refd)***
Soh Ching Hock v. Rajan Sadasiwar & Anor [2016] 2 PILRU 50 ***(refd)***
Subbaiyammah Kanna Naidu lwn. Wong Kian Wooi & Satu Lagi [2023] CLJU 204; [2023] 1 LNS 204 SC ***(refd)***
Tajuddin Sheikh Daud v. Wong Kim Yin [1989] 2 CLJ 237; [1989] 2 CLJ (Rep) 546 HC ***(dist)***
Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeals [2021] 9 CLJ 179 FC ***(refd)***
Thirukumaran Shanmugam v. Nyana Prakash Sepiah [2023] CLJU 865; [2023] 1 LNS 865 HC ***(refd)***
Vasantha Kumari Supramaniam & Anor v. Dr Pakirisamy Baskaran & Ors [2024] CLJU 2891 HC ***(refd)***
Yang Salbiah & Anor v. Jamil Harun [1981] CLJU 106; [1981] 1 LNS 106 FC ***(refd)***
Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd [2010] 1 CLJ 484 CA ***(refd)***
Yusnita Johari v. Dr Jerilee Mariam Khong & Ors [2023] 7 CLJ 89 HC ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 28A(2)(c)(i)
Medical Device Act 2012, s. 5(1)
Rules of Court 2012, O. 27 r. 3(1)

For the plaintiff - Brijnandan Singh Bhar Gurcharan Singh, Harwinder Kaur Harbhajan Singh, Natasha Bhar Brijnandan Singh, Dhanesh Subramaniam Nair & Jasween Kaur Dhaliwal; M/s AJ Ariffin, Yeo & Harpal
For the defendant - Husniyyah Hanapi; SFC & Siti Asmath Che Man; FC

Reported by Lina E

JUDGMENT

Su Tiang Joo J:

This court will not take judicial notice that private hospitals are necessarily better than Government hospitals.

Introduction

[1] The first plaintiff, Krishnasamy a/l Jayaraman ("P1") is the father of the second plaintiff, Vimal Raj a/l Krishnasamy ("P2").

[2] Liability for this action was conceded on 22 July 2024 (encl. 261), with judgment entered against the Government of Malaysia, the sixth defendant ("D6") grounded on vicarious liability with the claims against all the other defendants struck out.

[3] This court is tasked to carry out the assessment of damages premised upon the plaintiffs' action grounded on negligence in the medical treatment and care provided to P2 at the Ampang General Hospital which led to the amputation of three parts of his limbs namely: (i) right transtibial (leg) amputation, (ii) left trans radial (arm) amputation, (iii) amputation of all the toes of the left foot and left foot sole debridement. There was deterioration of both his physical and psychological health. P1 had quit his job as a lorry driver in order to take care of P2. He claims for loss of earnings and mental distress over P2's condition.

[4] Six witnesses were produced to testify for the plaintiffs and two witnesses were called for the remaining sole defendant.

[5] The plaintiffs called the following witnesses during the trial on assessment of damages:

(i) Urmilah Dass a/p M Bhaskara Dass, a Consultant Clinical Psychologist (PW1);

(ii) Professor Dr Ong Teng Aik, Professor and Consultant Urologist (PW2);

(iii) Nadzirah binti Abdul Razak, Prosthetist and Orthotist (PW3);

(iv) Dato Dr Balwant Singh a/l Pritam Singh, Senior Consultant Royal Physiotherapist (PW4);

(v) P1 (PW5); and

(vi) P2 (PW6).

[6] On the other side, the defendant called the following witnesses to testify:

(i) Dr Elyana binti Jalil, rehabilitation specialist (DW1); and

(ii) Dr Mohamed Akbar bin Mohamed Bahari, General Surgeon (DW2).

[7] The following documents were marked during the trial:

	DOCUMENTS	ENCLOSURES	MARKED
i.	Ikatan Dokumen Bersama Jilid 1	Enclosure 80	IDB 1
ii.	Ikatan Dokumen Bersama Jilid 2	Enclosure 81	IDB 2
iii.	Ikatan Dokumen Bersama Jilid 3	Enclosure 82	IDB 3
iv.	Ikatan Dokumen Bersama Jilid 4	Enclosure 83	IDB 4
v.	Ikatan Dokumen Bersama Jilid 5	Enclosure 84	IDB 5
vi.	Ikatan Dokumen Bersama Jilid 6	Enclosure 85	IDB 6
vii.	Ikatan Dokumen Bersama Jilid 7	Enclosure 86	IDB 7
viii.	Ikatan Dokumen Bersama Jilid 8	Enclosure 87	IDB 8
ix	Ikatan Dokumen Bersama Jilid 9	Enclosure 91	IDB 9
x.	Ikatan Dokumen Bersama Jilid 10	Enclosure 92	IDB 10
xi.	Ikatan Dokumen Bersama Jilid 11	Enclosure 93	IDB 11
xii.	Ikatan Dokumen Tambahan 1	Enclosure 104	IDT 1
xiii.	Ikatan Dokumen Tambahan 2	Enclosure 117	IDT 2

[8] P2 was a healthy 15-year-old teenager with no chronic illness when he was admitted to the emergency unit of the Ampang General Hospital on 14 January 2019 for a case of severe scrotal infection. There, various doctors gave inconsistent diagnoses of epididymo-orchitis, balanitis, Fournier's gangrene, and herpes simplex. He was treated with multiple antibiotics and antivirals despite there being no clear confirmation of any diagnosis. He was, however, discharged on 17 January 2019 with a diagnosis of hypospadias but such a diagnosis was not signed off in his discharge papers by any specialist.

[9] Five days later, on 22 January 2019, P2 collapsed at home. He was readmitted and fell into a coma. He received treatment at the intensive care unit ("ICU") of Ampang General Hospital. Whilst there, inotropes were to be administered through a central line in his neck but was instead administered through his peripheral vein in his hand causing swelling and peripheral gangrene of both his hands and his left leg. P1 was given inconsistent explanations including that there were suspicions of cancer, presence of Human Immunodeficiency Virus ("HIV") and herpes simplex. P2's condition continued to worsen despite various referrals to several doctors, and he suffered immense pain, disability and further medical complications.

[10] Between March and November 2019, P2 underwent a series of amputations due to the presence of gangrene caused by the administration of inotropes. On 14 March 2019, his left hand up to the elbow, and right leg just below the knee were amputated. On 30 May 2019, his left foot sole was debrided. On 24 July 2019, P2's left toes were amputated, and later, on 26 November 2019, P2 underwent corrective surgery on his right leg stump as it had not healed properly. During this period, he was also placed on 480

days of *tuberculosis* medication which further compromised his immune system although there was no positive test that he had *tuberculosis*. P2 was referred to rehabilitation hospitals for physiotherapy and psychological treatment, but the damage was irreparable. A later meeting with the Deputy Director of the Ampang General Hospital confirmed there was indeed an error in administering the inotrope dose, which was the root cause of his life-altering injuries.

Quantum

[11] The assessment of damages in personal injury cases is governed by well-established legal principles. The primary objective is to restore the plaintiffs to the position they would have been in had the negligent act not occurred. As stated by the House of Lords in *Lim Poh Choo v. Camden and Islington Area Health Authority* [1980] AC 174, the fundamental principle is that:

> The damages awarded to a plaintiff should, so far as possible, put that plaintiff in the same position as he or she would have been in if he or she had not sustained the wrong for which he or she is now getting his or her compensation or reparation.

[12] This principle has been consistently applied in Malaysian jurisprudence, most notably in *Yang Salbiah & Anor v. Jamil Harun* [1981] CLJU 106; [1981] 1 LNS 106; [1981] 1 MLJ 292; [1980] 1 MLRA 716 , where Raja Azlan Shah CJ emphasised that damages are compensatory in nature and should not enrich the plaintiff.

[13] The law requires that all damages including future losses, be assessed once and for all at the time of judgment. As stated in *Inas Faiqah Mohd Helmi (A Child Suing Through Her Father And Next Friend; Mohd Helmi Abdul Aziz) v. Kerajaan Malaysia & Ors* [2016] 2 CLJ 885; [2016] 1 MLRA 647; [2016] 2 MLJ 1; [2016] 2 AMR 217; [2016] 1 PIR 16:

> Damages are to be assessed once and for all covering past, present and future losses in a lump sum and are not subject to review as the future unfolds.

[14] This principle has particular significance in P2's case given his young age and the need to project his needs over a lifetime spanning potentially from 50 up to 60 years. This court must make assumptions about future medical advances, inflation and P2's changing needs while providing a lump sum that will adequately meet his requirements throughout his life. It is this court's duty to ensure that the damages to be awarded are reasonable and proportionate. In *Ong Ah Long v. Dr S Underwood* [1983] 2 CLJ 198; [1983] CLJ (Rep) 300; [1983] 1 MLRA 154; [1983] 2 MLJ 324, the court emphasised that damages should be fair and adequate but not excessive.

[15] The plaintiffs claimed for a total of RM18,323,340.20 but later corrected to RM18,383,340.20 by learned counsel for the plaintiffs on 3 November 2025, while the defendant asserted the plaintiffs ought to be

entitled to only RM918,560. The following table sets out the particulars of each head of claims and the amount claimed by the plaintiffs and the defendant's proposals:

Items	Plaintiffs	Defendant
Pain And Sufferings		
Right trans-tibial amputation	RM90,000.00	RM79,000.00
Left trans radial amputation	RM70,000.00	RM70,000.00
Left foot sole wound debridement	RM40,000.00	To be dismissed ("**TBD**")
Left foot toes amputation	RM40,000.00	RM36,500.00
Right leg stump corrective surgery	RM30,000.00	RM18,000.00
P2's pain and sufferings for 4 Major Operations	RM40,000.00	TBD
Mental, Psychological, Cognitive and Behavioural Disorder		
P2's Mental, Psychological, Cognitive and Behavioral Disorder	RM150,000.00	RM25,000.00
P2's Future Psychotherapy treatment	RM129,600.00	TBD
P2's Art therapy	RM108,000.00	TBD
P2's IQ test	RM7,500.00	TBD
P1's Psychotherapy Treatment	RM69,120.00	TBD
P1's Psychological Post Traumatic Disorder	RM150,000.00	TBD
Erectile Dysfunction		
Erectile dysfunction ("**ED**")	RM100,000.00	RM60,000.00
P2's ED Future treatment	RM369,600.00	RM156,560.00
Penile Prosthesis Implantation	RM210,000.00	
Testosterone Treatment	RM192,000.00	
Prosthetics		
Left trans-radial prosthesis (arm)	RM3,513,872.00	RM200,000.00

Right trans-tibial prosthesis (below knee)	RM2,920,394.79	RM253,500.00
Physiotherapy Future Treatment		
Physiotherapy Future treatment	RM39,000.00	TBD
Massage Therapy	RM396,000.00	TBD
Lumbar Cossette	RM12,375.00	TBD
Firm Mattress	RM16,500.00	TBD
Transcutaneous Electro-Muscular Stimulator Home Kit	RM2,167.00	TBD
Normal Wheelchair	RM71,500.00	TBD
Motorised Wheelchair	RM391,875.00	TBD
Anti-Gravity Chair	RM148,500.00	TBD
Kinect Cognitive Interactive Therapy	RM49,250.00	TBD
Modified Washroom and Commode with accessories	RM15,500.00	TBD
Modified Steering Wheel	RM181,500.00	RM20,000.00
Car (lifetime cost for a SUV	RM1,050,000.00	TBD
Cost for a house	RM591,000.00	TBD
Cost of future education	RM15,000.00	TBD
P1's loss of earnings	RM1,920,000.00	TBD
P2's future home care	RM1,740,000.00	TBD
P2's loss of earning capacity	RM1,320,000.00	TBD
Special Damages (Other Items)		
Consultation fees of Mr. Stuart Venner Pack of Medo Opinion Asia Sdn. Bhd.	RM59,496.40	
Dato' Dr Balwant Singh Bains (Physiotherapist)	RM4,400.00	

Dr. Nadarajan a/l Sudhakaran (Paediatric Surgeon)	RM4,500.00	Proposed that these items be considered under costs for the proceedings.
Dr. Timothy William (Infectious Diseases)	RM3,500.00	
Dr. Selvalingam a/l Sothilingam (Urologist)	RM2,000.00	
Professor Dr. Ong Teng Aik (Urologist)	RM6,790.00	
Dr. Tunku Nor Taayah Binti Tunku Zubir (Rehabilitation)	RM6,400.00	
Mr. Irfan Ali (Prosthesis)	RM3,500.00	
Puan Nadzirah Binti Abdul Razak	RM9,000.00	
Dr. Norharlina Binti Bahar (Psychiatrist)	RM3,500.00	
Urmilah Dass A/P M Bhaskara Dass (Psychologist)	RM5,000.00	
Dr. K.S. Sivananthan (Orthopaedic)	RM5,000.00	
Aggravated damages	RM1,000,000.00	TBD
Exemplary damages	RM1,000,000.00	TBD
TOTAL	**RM18,383,340.20**	

Court's Analysis And Findings

Amputation Of Right Transtibial

[16] The plaintiffs submit that the revised compendium of personal injury award 2018 recommends an award of RM66,500 to RM79,000 for this injury. The plaintiffs referred to *Muhammad Azran Mazlan lwn. Tan Thong Hock & Satu Lagi* [2021] 5 LNS 135; [2021] SMCU 135; [2021] MLJU 2256 that allowed RM75,000 for left below knee amputation and *Sargunan Tannimalai v. Abdul Mutalib B Khamis & Anor* [2011] PILRU 113 where the Sessions Court awarded RM90,000 for below knee amputation with muscle spasm, tremors and numbness. Thus, the plaintiffs submit that RM90,000 should be awarded to P2. The defendant, on the other hand, submitted that a sum of RM79,000 should be awarded by this court. The defendant argued that RM90,000 is excessive since P2 did not suffer from muscle spasm, tremors and numbness. In the case of *Subbaiyammah Kanna Naidu lwn. Wong Kian Wooi & Satu Lagi* [2023] CLJU 204; [2023] 1 LNS 204; [2023] MLJU 2289, the Sessions Court allowed RM70,000 for the same injury.

[17] This court agrees with the defendant and awards P2 a sum rounded up to RM80,000 for his right transtibial amputation.

Left Transradial Amputation

[18] The plaintiffs submitted that the revised compendium of personal injury award 2018 recommends an award of RM55,000 to RM60,000 for this injury. The plaintiffs referred to the case of *Noor Syazwani Zabri & Anor v. Tan Huen Man* [2017] MLJU 2336; [2018] 1 PIR 59, where the Sessions Court made an award of RM70,000 for below elbow amputation, and, thus, submitted the same amount should be awarded to P2. The defendant is agreeable to this amount.

[19] This court awards P2 with a sum of RM70,000 for his left transradial amputation.

Debridement Left Foot Sole

[20] The plaintiff submitted that the revised compendium of personal injury award 2018 recommends an award of RM30,000 to RM48,500 for such an injury and submitted that RM40,000 is justified. The defendant submitted that the procedure is to merely to remove dead tissues on the left foot sole (IDB 1 pp. 85 & 86) and, thus, this claim should be rejected by this court. The court agrees that it is a minor surgery but nevertheless, P2 has been subjected to pain and suffering for this operation.

[21] This court awards P2 a sum of RM5,000 for this minor operation.

Amputation Of Left Foot Toes

[22] The plaintiffs submitted that the revised compendium of personal injury award 2018 recommends an award of RM21,500 to RM36,500 for this injury. The plaintiffs referred to *Thirukumaran Shanmugam v. Nyana Prakash Sepiah* [2023] CLJU 865; [2023] 1 LNS 865; [203] MLJU 1014; [2023] MLRHU 710 where the court awarded RM30,000 for the amputation of four toes. The plaintiffs submitted that RM40,000 should be awarded to P2. The defendant, on the other hand, submitted that a sum of RM36,500 should be sufficient. As the revised compendium was published in 2018, the court is of the considered opinion that a sum of RM40,000 is reasonable.

[23] This court awards P2 a sum of RM40,000 for the amputation of the toes of his left foot toes.

Corrective Surgery Of The Right Leg Stump

[24] The plaintiffs referred to PI's evidence:

> KJ Kaki palsu, dia itu dikira itu umpama macam belon. Kira dia mahu check yang tulang itu bawah ada ngam ke ada potong betul-betul, tapi dia check tengok dia orang tak ada potong betul-betul. Lepas itu, dia orang kasi potong balik. Dia orang sudah potong kaki itu, tak ada ikat dalam.

BSB Sebelum dia boleh pasang kaki, you bagi tahu sama Yang Arif, dia orang tengok dia punya kaki yang dipotong, right, itu stem tak elok lagi. Betul? Right?

KJ Ya.

BSB So, dia orang buat lagi satu operation. Betul?

KJ Betul.

[25] The plaintiffs submitted that RM30,000 is justifiable for this injury while the defendant submitted that it should be RM18,000 for this injury.

[26] This court finds from the evidence given by P2, he was able to walk around without his prosthetics at home on his right stump as can be seen in the photograph at p. 37 in encl. 118 post the corrective surgery, and awards P2 with a sum of RM18,000 for the corrective surgery to his right leg stump.

Pain And Sufferings For Four Major Operations

[27] The plaintiffs submitted RM10,000 should be awarded for each surgery and, thus, a total of RM40,000 is justifiable for P2's pain and sufferings. The defendant with reference to IDB 8, p. 1747, IDB 1 p. 124, IDB 2 p. 238 and IDB 2 p. 347 submitted that this claim should not be allowed by this court since the surgeries for the amputations are necessary due to the presence of gangrene, and that awards should only be given for unnecessary operations as decided by the case of *Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor And Another Appeal* [2018] 3 CLJ 427; [2018] 3 MLJ 281; [2018] 1 MLRA 535; [2018] 1 AMR 209. In my considered opinion, these amputations would not have been necessary, if not, for the negligent treatment suffered by P2. However, the awards for the four amputations have taken into account the pain and suffering and by reason thereto, to make any further award for the same would amount to duplicity. Thus, the claim under this head of claim is not allowed.

Mental, Psychological, Cognitive And Behavioural Disorders And Future Treatments

Mental, Physical, Cognitive And Behavioural Disorder

[28] The plaintiffs referred to encl. 114 (PWS-1B) and submitted that PW1 found that P2 suffered physically, emotionally and psychologically since P2 needed to endure severe pain as well as the fear of not knowing what was going on, being alone in the ICU and re-learning how to function again. Reliance was placed on the case of *Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor And Another Appeal* (*supra*). PW1 also states that P2 is suicidal as he had threatened P1 that he would jump from their home which is a flat on the 10th floor.

[29] The plaintiffs further submitted that based upon PWI's evidence, P2 suffers from post-traumatic stress disorder, moderate depression, generalised anxiety, personality changes as he is easily angered, socially withdrawn, has

suicidal tendencies, sleep disturbances, suffers from low self-esteem, has physical and psychological maladies and phantom limb pain, as well as impaired cognitive function and memory impairment. The plaintiffs referred to the revised compendium of personal injury award 2018 which recommends an award of RM24,000 to RM48,500 for mild personality or behavioural changes, RM24,000 to RM55,000 for memory impairment, RM60,000 to RM180,000 for intellectual impairment and RM15,000 for post-traumatic stress disorder ("PTSD"). Further, they seek a sum of RM5,000 to RM25,000 for depression. The plaintiffs placed reliance on the case of *Nurul Iman Abu Mansor v. Gleneagles Hospital Kuala Lumpur Sdn Bhd & Anor* [2025] 2 CLJ 824; [2024] MLJU 2386 where the High court awarded RM75,000 for psychiatric injury due to an irreversible nerve damage to the plaintiff's hand. Thus, the plaintiffs submitted that a sum of RM150,000 is justifiable taking into account inflation as a contributing factor. The defendant referred to p. 148 of IDT 2 where DW2 had referred P2 to the psychology clinic in the Government's Cheras Rehabilitation Hospital. It is undisputed by the defendant that P2 has suffered from PTSD, anxiety and moderate depression due to such amputations and submitted that RM15,000 is justifiable for moderate depression while RM10,000 is justifiable for PTSD.

[30] P1 agreed that he did not seek medical aid for P2's mental health due to the reason that he hates going to the Government hospital. In my considered opinion, it would set a bad precedent if the reason that he hates going to a Government hospital is to be accepted. With respect, in my considered opinion, given that it is not uncommon to see medical negligence cases involving private hospitals in court and in the law reports, I would not take judicial notice that private hospitals are necessarily better. Given the huge volume of patients the Government hospitals serve, and without any empirical evidence that private medical institutions are necessarily better, to tar Government hospitals which serve hundreds of thousands, if not millions of people as a whole is unacceptable. After taking into account all the mental, physical, cognitive and behavioural disorders and to give a deduction for any duplicity in physical disorders, P2 is awarded RM85,000 for his mental, psychological, cognitive and behavioural disorder.

Future Psychotherapy Treatment

[31] PW1 recommends continued psychological support in the form of psychotherapy sessions to assist P2 recover from his trauma. This will help him to heal from his trauma. PW1 also recommends art therapy to enhance his critical thinking, increase his self-esteem and to give him an outlet to express himself and let go of all his negative feelings and fears. PW1 also recommends P2 to be administered with an intelligence quotient, IQ test so as to check if there is any improvement in his cognitive function over time (see pp. 15-16 & 23 of PWS-1B in encl. 114, p. 13 of PWS-1C of encl. 116 and p. 22, Q&A-50 of PWS-1A in encl. 128). PW1 testified that the

psychotherapy sessions are important to avoid P2's suicidal intentions. PW1 testified the total amount for future psychotherapy treatment is RM129,600. The defendant referred to p. 147 IDTB 2 which is DWI's report that P2 is healthy and did not take any medication or had scheduled another follow-up appointment. The defendant stressed that psychotherapy treatment is available without any charge in Government's facilities and clinics, and, thus, this claim should be dismissed by this court.

[32] In relation to the services provided for free in Government facilities, the plaintiffs referred to *Tajuddin Sheikh Daud v. Wong Kim Yin* [1989] 2 CLJ 237; [1989] 2 CLJ (Rep) 546; [1989] 1 MLRH 806 to support their claim where the High Court held that:

> As regards the plaintiff's action of discharging himself from the Government hospital and readmitting himself into a private hospital against medical advice, the court found that he was receiving grossly inadequate attention and treatment. Therefore, the plaintiff was entitled to try to seek greater recovery of his injuries and reduce his residual disabilities by discharging himself from the Government hospital. Plaintiff's claim for RM19,840.10 as the expenses incurred was allowed.

[33] The plaintiffs submitted that the principle established in the above case is applicable to the present situation because P2 did not receive adequate or effective treatment from the Government's clinic.

[34] In my considered opinion, the case of *Tajuddin Sheikh Daud* is readily distinguishable as there was evidence there that the medical officer admitted that he has to see 250 patients all on the same day and, thus, the need to seek alternative treatment elsewhere by the plaintiff. Here, the plaintiffs did not give any evidence of lack of medical services that could be available for future psychotherapy treatment sought save to assert that P2 hates going to Government hospitals. In *Inas Faikah* (*supra*) at para. 36, the Federal Court held that in determining a claim for future medical treatment be it at a private or at a public hospital, the question of reasonableness in making such a claim should always be the paramount consideration; the plaintiff not only needs to justify why he chooses treatment at a private hospital over a public one, but he must also show that the amount claimed is reasonable.

[35] In this case, the Government hospitals provide psychotherapy treatment for free and the plaintiff and in particular P2 can always seek a referral to a psychiatrist or psychologist that he is comfortable with.

[36] Thus, the court agrees with the defendant that this head of claim is to be rejected.

Art Therapy

[37] As for art therapy, PW1 testified that the cost is about RM300 per session (see p. 32 of encl. 311). The total amount comes to RM108,000 for ten years. The plaintiffs pray that this amount be allowed by this court. The defendant referred to p. 14 of the PWS-1B (encl. 114) and submitted that the

traumatic event suffered by P2 has no correlation to his intellectual capacity, and, thus, this claim should not be allowed. And, that P2 should be encouraged to interact with other people to boost his confidence. The plaintiffs have also failed to prove what P2's intellectual capacity was before the amputations, and thus, this claim should fail since it is not meant for PTSD, anxiety and depression.

[38] From the evidence led, P1 was not aware that P2 could be sent to any vocational or technical institutions run by the Government. Instead, the evidence led shows that P1 does not want to send P2 to such institutions even though P2 wants it. P1 admits that he will not allow it because he insists that he has to look after P2.

[39] Guided by *Inas Faiqah* (*supra*), this court finds this claim to be unreasonable as P2 can be sent to Government funded programs, in technical and vocational institutions, which would be provided free of charge. Thus, this claim is rejected.

IQ test

[40] PW1 testified that P2 needs an IQ test that costs RM1,500 for each test and report which is to be carried out once every two years for the next ten years, to assess his cognitive function. Thus, the total amount that was claimed from the defendant is RM7,500. The defendant once again submitted that an IQ test is not meant for PTSD, anxiety and depression and, thus, this claim should not be allowed by this court.

[41] This court accepts the submissions presented by the defendant that the plaintiffs have failed to prove that his mental capacity in terms of his IQ have been affected by the injuries suffered by him.

[42] Again, guided by *Inas Faiqah* (*supra*), this court finds this claim to be unreasonable and is rejected.

P1's Psychotherapy Sessions

[43] PW1 recommends regular psychotherapy sessions individually with P1 and his wife, in order for them to get past the trauma and grief that they have endured. PW1 testified that they may also need to meet with a psychiatrist for psychopharmacologic intervention (see p. 13 of PWS-1C (encl. 116), p. 16 of PWS-1B (encl. 114) and p. 25 PWS-1A (encl. 128)). PW1 also testified that P1 and his wife should initially attend psychotherapy sessions once on a weekly basis.

[44] The plaintiffs submit that the calculation of PI's psychotherapy treatment for the next ten years would be RM69,120 as follows:

(i) RM360 x 1 session/week x 2 years = RM34,560; and

(ii) RM360 x 1 session/month x 8 years = RM34,560

[45] The defendant submitted that PWI's report is biased towards the plaintiffs. In the event PW1 has diagnosed P1 as suffering from any mental, emotional distress, depression, anxiety and PTSD, PW1 should have referred him to the hospital. She failed to do so. It is also the defendant's stand that PW1 is not a medical doctor, and, thus, her findings, is not binding on this court and that, therefore this claim should not be allowed.

[46] From the evidence led, PW1 agreed that P1 could seek such treatment from the Government hospitals. There was no evidence led that P1 had done so. His refusal to seek treatment from Government hospitals, is in my considered view, unreasonable and guided by *Inas Faiqah* (*supra*), the court rejects this claim.

P1's Psychological Post Traumatic Disorder

[47] PW1 testified that P1 and his wife have suffered tremendous emotional and psychological distress. They also had to endure vicarious trauma as a result of witnessing and supporting P2 through his traumatic medical journey. They have been accused of neglecting P2 and are not caring enough for their children and, thus, causing P2 to become ill (see p. 13, PWS-1B in encl. 114, p. 12, PWS-1C encl. 116). The plaintiffs submitted that this had affected their mental health. PW1 (P1) testified that he suffered stress and trauma when the doctors openly discussed in front of their friends and relatives that P2 was suspected to be HIV positive. This caused humiliation and distress to P1 and his wife. P2 asserted he has lost all his friends, and even their extended family members have abandoned them due to this unfounded diagnosis. The plaintiffs submitted that such discussions by the doctors without maintaining confidentiality is in breach of the rule of confidentiality under Rules 4 and 8 Malaysian Medical Council Guidelines.

[48] PW1 with reference to p. 12, PWS-1C in encl. 116 and pp. 23 to 24 of PWS-1A, testified that she had administered various psychometric tests that measured their level of depression, anxiety, hopelessness and to ascertain whether they are suffering from post-traumatic stress. The test results from DASS-21 (depression-anxiety stress scale) showed that P1 suffered from extremely severe depression and the PCL-5 (post-traumatic stress checklist five civilian version) test showed possible post-traumatic stress. The plaintiffs referred to the case of *Nurul Iman Abu Mansor v. Gleneagles Hospital Kuala Lumpur Sdn Bhd & Anor* [2025] 2 CLJ 824; [2024] MLJU 2386 where the High court awarded RM75,000 for psychiatric injury due to irreversible nerve damage to the plaintiffs' hand. Thus, in view of this case where the injuries suffered by P1 is far greater than the above mentioned case it was submitted that a sum of RM150,000 is reasonable for the above injuries suffered by P1. The defendant, on the other hand, submitted the Government offered free services to P1 and there is no medical report on P1's psychological condition that was made available in this court to prove that he is suffering from psychotic post-traumatic disorder.

[49] PW1 agreed that P1 could seek psychotherapy from the Government's hospitals.

[50] P1's refusal to seek treatment from Government hospitals, is in my considered view, unreasonable and guided by *Inas Faiqah* (*supra*), the court rejects this claim. However, the remarks made about P2's being HIV positive aggravates the distress suffered and this will be dealt with under the head of claim for aggravated damages.

Erectile Dysfunction

Quantum For Erectile Dysfunction

[51] PW2, a Professor and Consultant Urologist testified on P2's erectile dysfunction arising from the traumatic events of such amputations. This court noted that the defendant did not call any expert in opposing the testimony of the plaintiffs' witness on this head of claim. The plaintiffs referred to the revised compendium of personal injury award 2018 and submitted that the importance of having fully functional sexual organs is obviously more important the younger the victim is like P2, and, thus, submitted for an award of RM24,000 to RM60,000 for erectile dysfunction and RM71,500 to RM97,000 for complete impotency.

[52] The plaintiffs referred to the case of *Soh Ching Hock v. Rajan Sadasiwar & Anor* [2016] 2 PILRU 50 where the court awarded RM70,000 for erectile dsyfunction. In the other case of *Iqbal Idlan Khalek lwn. Zarina Mohd Zaman* [2024] SMCU 77; [2024] MLJU 715, the court awarded RM80,000 for erectile dsyfunction. The plaintiffs submitted that P2 is unable to achieve penile erection completely (erectile hardness score: grade 1 = no erection at all), therefore, falling in the category of complete impotency coupled with low testosterone levels and, thus, submitted a sum of RM100,000 as damages.

[53] The defendant submitted that PW2 failed to treat P2 with any medication for erectile dysfunction, and did not adduce any evidence for such impotency and, thus, submitted that P2 should be treated with medication and RM60,000 should be awarded by this court to P2.

[54] P1 testified that as a father he cannot give his son a viagra but later changed his testimony to him being unable to provide such medication due to the price.

[55] After hearing the competing submissions, bearing in mind that damages are to be assessed once and for all covering past, present and future losses in a lump sum, and are not subject to review as the future unfolds. This court is of the considered view that a reasonable sum of RM80,000 is to be provided for P2's claim for erectile dysfunction.

P2's Future Treatment (Erectile Dysfunction)

[56] PW2 testified that P2 will require these future treatments until approximately the age of 70. Calculated from the anticipated date of decision in October 2025, at which time P2 will be 22 years old, this yields a multiplier of 48 years. PW2 in his evidence calculated the quantum as follows:

PDE5I medication - RM50/pill x 2 pills/week x 52 weeks x 48 years = RM249.600.00

Vacuum pump - RM3000.00 device x 24 years (48 years/every 2 years) = RM72,000.00

Maintenance of vacuum pump - RM1,000.00/year x 48 years = RM48,000.00

Total: RM369,600.00

[57] The defendant referred to PW2's report at pp. 24 and 25 of PWS-2B which says that erectile dysfunction can be cured by medication with 60% to 80% success rate. Thus, the defendant submitted that the quantum that should be allowed for future medication based upon the costs of medication of RM15 for 52 weeks over P2's lifespan of 51 years which would amount to RM39,780, (and not RM1,560 as submitted by the defendant) The defendant referred to the case of *Kasirin Kasmani v. The Official Administrator & Anor* [1991] 3 CLJ 2498; [1991] 2 CLJ (Rep) 800 and submitted that the plaintiffs (P2) are under a duty to minimise the expenses and claim for reasonable damages. The defendant also submitted that a sum of RM15,000 for the vacuum pump would be reasonable.

[58] With P2 being still young at 22 years of age, this court accepts PW2's evidence that P2 can be first treated with medication and as each pill costs RM15 (PWS-2b pp. 24 and 25), this court allows a sum of RM15 per pill x 2 per week x 48 years which amounts to RM74,880. As for the need for a vacuum pump, this court finds that from the evidence of PW2, the treatment for a vacuum pump is in the alternative, and with a sum having been awarded for treatment *via* medication the court rejects the claim for this item because a further award will be made for penile prosthesis to cater for the event that such a treatment is required in the event treatment by medication fails.

Penile Prosthesis Implantation And Testosterone Treatment

[59] PW2, in his testimony, noted that if all the above treatments are unsuccessful, P2 claims the cost of penile prosthesis implantation at RM40,000 per device and RM30,000 for the surgical fee on the premise that there would be a need for three implantations in his lifetime, and, thus, claimed a total cost of RM210,000. As for the testosterone treatment ("TRT"), the TRT injections are needed to be taken every three months

which cost around RM800 to RM1,000 taking into account administrative and professional charges. The calculation will be RM1,000 x 4 times a year x 48 years, and thus a total cost of RM192,000 is needed for the TRT. The plaintiffs referred to the case of *Nurul Husna Muhammad Hafiz & Anor v. Kerajaan Malaysia & Ors* [2015] 1 CLJ 825; [2015] 1 MLRH 234; [2015] 1 PIR 2 and submitted that this future treatment must be granted by this court since P2 will not have the opportunity to return to court should his condition deteriorate or his needs increase in the future.

[60] The defendant submitted that each penile prosthesis will cost P2 RM40,000 and further submitted that two or three times of this procedure is enough, thus, a total amount of RM140,000 should be allowed by this court for penile prosthesis implantation. The defendant referred to pp. 25 to 26 of PW2's report in PWS-2B where he testified that any testosterone treatment requires further treatment from an endocrinologist, and in the absence of any expert evidence from an endocrinologist, P2's claim for testosterone treatment should be rejected by this court.

[61] This court allows the claim for penile prosthesis implantations of RM140,000 guided by the law that any claims have to be settled once and for all to cater for the eventuality that this implantation and procedure may be needed in the future. This court agrees with the defendant that with no evidence led from an endocrinologist that TRT is needed for P2, the claim for the need for TRT is not allowed.

Prosthetics

Left Transradial Prosthesis (Arm) And Right Tibial Prosthesis Below Knee

[62] The plaintiffs submitted that DW1 is not a prosthesis expert. DW1 has a medical degree and a postgraduate Masters of Rehabilitation Medicine, (see encl. 135 p. 6, exh. EJ1). It was pointed out that DW1 admitted she was not a certified prosthetist expert and that a certified prosthetist and orthotist have their own degree program. Reference was made to O. 27 r. 3(1) of the Rules of Court 2012 and the case of *Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors* [1993] CLJU 103; [1993] 1 LNS 103; [1994] 1 MLJ 740; [1993] 5 MLRH 142; [1993] 2 AMR 3525, where the High Court held that:

> Admissions are the strongest evidence possible and even a wrong construction of a document will be assumed to be correct in view of the admission.

[63] The plaintiffs submitted that DW1 is a rehabilitation physician but, nevertheless, she was not a certified Prosthetist and Orthotist and, thus, lacks the relevant knowledge on the types, price and fitting of prostheses. The plaintiffs asserted that DW1 gave evidence on costing and pricing of prostheses given by a third party supplier to whom the Government's Cheras

Rehabilitation Hospital had outsourced for such supply. And, thus, it was submitted that DW1's evidence on pricing and costing should be disregarded by this court since it was hearsay evidence. It was further asserted that the defendant failed to call a certified Prosthetist and Orthotist as an expert to give evidence in court.

[64] On the other hand, PW3 testified before this court that she is a certified Prosthetist and Orthotist. Reliance was placed by the plaintiffs on the case of *Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd* [2010] 1 CLJ 484; [2010] 1 MLJ 805; [2009] 3 MLRA 112; [2011] 4 MLJ 805; [2010] 1 AMR 448 (refd) which held that it is the duty of the court to find whether the expert is indeed an expert specially qualified armed with the necessary skills and experience and have a vast knowledge in the field of inquiry carried out by him.

[65] The plaintiffs submitted that as DW1 is not an expert on prosthetics, and, thus, she should not encroach into the expertise of another expert and her evidence ought to be constrained to only her area of expertise, that is, of rehabilitation.

[66] The plaintiffs further submitted that DW1 is not an independent expert as she had treated P2 during P2's time in the Cheras Rehabilitation Hospital and she had also prepared a medical report as can be seen in pp. 146 to 150 of encl. 117. It was pointed out that rr. 26 and 27 of the Malaysian Medical Council's Guidelines Of An Expert Witness provide that a Registered Medical Practitoner ("RMP") involved in the management of the same patient, as the RMP in the legal proceedings or disciplinary inquiry shall not appear as an expert witness in such legal proceedings or disciplinary inquiry and, if there is any conflict of interest, it should be disclosed as soon as possible.

[67] Therefore, the plaintiffs submitted that this court should accept the testimony of PW3 on her recommendation for the need and the quotation for: (i) a transradial prosthesis l-limb ultra friction wrist hand with custom made carbon fibre socket and revofit two suspension for the left arm, costing RM3,513,872 and (ii) a right transtibial prosthesis endolite elanlc foot, carbon reinforced plastic socket with PE liner plus Endolite Silcare liner plus Endolite shuttle lock together with a left foot prosthesis for RM2,920,394.79.

[68] The plaintiffs referred to and relied upon the case of *Sia Hiong Tee & Ors v. Chong Su Kong & Ors* [2015] 8 CLJ 1173; [2015] 4 MLJ 188; [2015] 3 MLRA 652; [2015] 4 AMR 31 and submitted that as the plaintiffs' expert witness evidence remained unrebutted, PW3's evidence should be accepted and thus, this court should allow the plaintiffs' claim for a total sum of RM6,434,266.79 for the recommended prostheses.

[69] Upon the court's direction for submissions on whether the recommended prostheses by both the plaintiffs and the defendant are registered medical devices under s. 5(1) of the Medical Device Act 2012, submissions were duly filed by the plaintiffs (encl. 329) and by the defendants (encl. 335). From the plaintiffs' submissions (encl. 329 para. 8), the court accepts that the recommended prosthes's for the right leg and left arm are registered. However, that for the left foot was not because it has to be customised to fit the needs of P2. As it has to be customised, an application can be made in due course to the Minister for it to be exempted from registration pursuant to the Medical Device (Exemption) Order 2024 which, *inter alia*, provides that the Minister, upon application, may exempt any medical device from registration under s. 5 of the Medical Device Act 2012 if the medical device is *inter alia* for the purpose of personal use or is custom-made. The plaintiffs asserted that it would in fact have to be custom-made for the sensors to be attached to the muscle of P2.

[70] The defendant, on the other hand, calls upon this court to assume that the prostheses recommended by DW1 would have been registered because only registered devices would be allowed to be marketed, and it is for P2 to purchase the same (E335 paras. 22 and 23). This is unsatisfactory and unacceptable. Evidence ought to have been led to ensure that the medical devices proposed are registered and if they are not, to explain why and whether under the law, it can be lawfully excepted or that steps will be taken to have them exempted in due course.

[71] The defendant referred to DWI's qualifications (encl. 135 p. 6 of D1), and submitted that DW1 was called in her capacity and qualification as a rehabilitation expert. On the other hand, the defendant submitted that the plaintiffs failed to call any expert on rehabilitation to give evidence in court (encl. 114 p. 28 of PWS-1B).

[72] The defendant submitted that a rehabilitation expert is important in determining P2's needs in future as an amputee to assist this court in awarding an appropriate quantum for damages. It was further submitted that DW1 was not sued as a defendant in this action, and thus, she did not have any conflict of interest to testify in court as an expert and, therefore, her evidence should not be barred from being admitted by rr. 26 and 27 of the Malaysian Medical Council's Guidelines Of An Expert Witness.

[73] The defendant submitted that the quantum that should be allowed for (i) a left transradial prosthesis (arm) should be a total of RM200,000 made up of RM20,000 (to be replaced every five years due to wear and tear) x 10 replacements) and (ii) RM250,000 for a right tibial prosthesis below knee as per DW1's evidence in this court made up of RM25,000 per unit to be replaced every five years for 50 years totaling a need for ten units. Further,

the defendant submitted that RM350 should be allowed as the future cost for the left leg orthosis or in the alternative a sum of RM3,500 made up of RM350 per unit to be replaced every five years for 50 years totaling ten units.

[74] From the evidence led and submissions presented, I find that:

(i) I was initially troubled by the fact that P2 had used the free prosthetic supplied by the Government for only two hours and failed to familiarise himself with the same but I accept that it did not fit properly;

(ii) the expert evidence on the need by P2 for prostheses given by PW2 as opposed to that given by DW1 is preferred as PW2 and not DW2 is qualified as an expert in the medical science of prosthetics;

(iii) the left arm and the right leg prosthetics are registered items under the Medical Device Act 2012 and Ministerial exemption can be later applied for the left foot prosthetic;

(iv) there was no bar against DW1 in giving evidence as she was a competent witness and was able to give factual evidence on the treatment given to P2 save that the probative value of her evidence on the quantum is left to this court to analyse; and

(v) I accept that the evidence given by DW1 on the suitability of the prosthetics recommended and supplied by a third party to whom the task was out-sourced is hearsay evidence, and in any event, has lower probative value compared to that given by PW2.

[75] Wherefore, the claims sought by the plaintiffs for the prosthetics in the sum of RM6,434,266.79 for the three items required by P2 to be put in a position as close as possible to his position prior the mishaps suffered by him whilst undergoing treatment by the personnel and institutions employed and run by the defendant is allowed.

Physiotherapy Future Treatment

Physiotherapy

[76] The plaintiffs called PW4 who is a physiotherapist. He carried out an assessment of P2 at P2's residence on 15 January 2021 (see his evidence contained in his witness statement at p. 15 of PWS- 4A). PW4 found that P2 has a limping gait and walks for a maximum of two minutes before he stops with complains of pain at his knee and hip joint and looks for his wheelchair. He also found that P2's left foot is averted because of the amputation of the digits and heel of his left foot. PW4 testified that RM39,000 is needed for future physiotherapy for P2 once a week for five years costing between RM100 to RM150 per session to improve P2's muscle strength of his weaker left side of the body and he will have to carry out a coordination program to improve his balance and walking pattern.

[77] The defendant submits that this quantum should not be allowed since it was not pleaded by the plaintiffs. The defendants submitted that in any event, P2 can undergo physiotherapy, therapy or rehabilitation from the Government facilities for free.

[78] The defendant further submits that the claims by the plaintiffs for massage therapy, lumbar corset, firm mattress, transcutaneous electro-muscular stimulator home kit, anti-gravity chair and kinect cognitive interactive therapy should not be allowed by this court in view of DW1's testimony (see pp. 558 to 560 of notes of evidence no. 2), where DW1 testified that all of these items are not compulsory for P2. I will deal with each of these claims in turn and will only deal with the claim for physiotherapy here.

[79] As observed earlier, this court finds that P2 has not been making the requisite efforts as advised by DW1 to familiarise himself with the prosthetics that were made available to him, *ie*, failed to make do with what is supplied for the time being. He ought to be persuaded to try. From the evidence given by DW1, P2 ought to try to wear what was supplied throughout the day but P2 would only do so for a maximum of two hours per day. This court observed that P2 was able to sit quietly in the court throughout the proceedings and in my considered opinion, given the necessary encouragement by P1, P2 should be encouraged to make use of the Government facilities.

[80] Wherefore, these claims are disallowed.

Massage Therapy

[81] PW4 gave evidence (at p. 23 of PWS-4A of encl. 118) that massage therapy is essential for P2's upper and lower limbs to keep the flow of the exudates and lymphatic drainages to prevent stagnation. He said that massage therapy would also help reduce contractures, keep the muscles supple and to give him a healthy feeling. The cost of massage therapy as claimed by the plaintiffs is re-calculated as follows:

> RM150 per session x 4 sessions per month x 12 months x 55 years giving a total of RM396,000.

[82] For the reasons given by the defendant that this therapy is available for free from the Government facilities, this claim is disallowed.

Lumbar Corset

[83] PW4 recommends (p. 23 of PWS-4A) that P2 wears a lumbar corset so as to keep his lumbar supported as he suffers back pain with radiating numbness into his lower limbs. This is due to his complaints of back pain, including while sitting in court, and which he did not suffer prior to the amputation. P2, in his testimony, confirmed that he intends to use the lumbar

corset as recommended by PW4 to help alleviate the back pain. The plaintiffs submitted a good quality lumbar corset ranges between RM250 to RM450 to be changed every two years. Thus, the plaintiffs submitted that a total sum of RM12,825 is justifiable for this claim.

[84] DW1, on the other hand, said that a lumbar corset does not assist because it is made of fabric and, thus, is not stiff enough to give support. Instead, physiotherapy is preferred to build up the muscles and this therapy is available free of charge to P2.

[85] This court allows a one off amount of RM450 for a lumbar corset for his peace of mind for a period of time, while P2 eases into his physiotherapy sessions at the Government facilities.

Firm Mattress

[86] PW4 (at p. 25 of PWS-41) recommends a firm mattress made up of coconut husk to support P2's spine during prolonged sleep. It is submitted that P2 requires a firm mattress as part of his essential care to support his spinal alignment and prevent further musculoskeletal complications. Given that he has undergone amputation of his left arm, left leg, and parts of his left foot (toes and heel), his body weight distribution is severely uneven. A firm mattress provides the necessary support to keep his spine in a neutral position during rest, reducing pressure on the back and preventing postural collapse or worsening of back pain. A good quality mattress ranges between RM1,200 to RM1,500, to be changed every five years. Thus, the cost claimed is calculated as RM1,500 x 11 replacements amounting to RM16,500.

[87] From the evidence presented, there is no evidence that such an item will be provided by the Government facilities and by reason of the evidence given by PW4, this court allows this claim but at the lower range of RM1,200 x 11 replacements amounting to RM13,200.

Transcutaneous Electro-Muscular Stimulator Home Kit

[88] PW4 testified that P2's spine problem is expected to bother him for the rest of his life. In his report (p. 25), he recommends transcutaneous electrical nerve stimulation (TENS) therapy for three years which uses low-voltage electrical current for pain relief. The electricity from the electrodes stimulates the nerve in an affected area and sends signal to the brain that blocks or scramble normal pain signals to help P2 to manage his pains.

[89] The transcutaneous elecro-muscular stimulator home kit costs between RM400 to RM1,000 and is durable for five years. The electrodes cost between RM30 to RM40 for a set of four electrodes and it was recommended that the set be changed once every two months. The required batteries cost between RM7 to RM11 and would last for a month. Thus, a total amount of RM2,167 is sought from this court as the quantum for this kit.

[90] The defendants submitted in their submissions in reply (encl. 324 paras. 112 with reference to the notes of proceedings) that it is dangerous for this equipment to be used at home and without proper supervision as it can cause burns. The defendants recommend that such equipment has to be used under the supervision of a rehabilitation physician and this service is available at Government facilities.

[91] I accept the submissions of the defendant and by reason thereto, this claim is not allowed.

Normal/Motorised Wheelchair

[92] PW4 recommends a light weight wheelchair with detachable features for P2. This is due to the possibility that in the future that when P2 falls ill, he may need assistance from friends or family members. This light weight wheelchair will not cause any untoward back ache or muscular injuries to the aide provider. The wheelchair cost between RM3,000 to RM5,000, and is to be changed once every five years. The repair and maintenance due to wear and tear will cost RM300 a year with a total cost of RM71,500.

[93] PW4 also recommends a simple motorised wheelchair for P2 to ambulate by himself. This is so that P2 does not have to wait for assistance to push him around and this can give him independence. The motorised wheelchair can help him travel out of the house or to work.

[94] The plaintiffs submitted that the fact that P2 will be fitted with a well-designed prosthesis does not eliminate the need for a wheelchair, as both serve different but essential functions and purpose. Prostheses, especially for major limb amputations like P2's left leg, right leg and left arm, require significant physical effort and a motorised wheelchair provides necessary relief during certain times alluded to above, and ensures continued mobility. The motorised wheelchair cost between RM25,000 to RM35,000 depending on the brand and safety features, and is to be changed once every five years, and, thus, the plaintiffs submitted that RM391,875 is justified for this claim.

[95] The defendant again placed reliance on the case of *Kasirin Kasmani* (*supra*) where it was held that the plaintiff has a duty to mitigate by claiming only for items that are reasonable and needed. It was pointed out that DW1, in her testimony (see p. 574 of the NOP Vol. 2), testified that there is no need to degrade P2's life as he can move his muscles and is a K3 type amputee which means that he is a community ambulator, *ie*, he can ambulate himself well and is just one class below that of K4 which is the class for paralympic athletes. DW1 testified that P2 can walk, move, and change his position without the need for a chair (see NOP Vol. 2 p. 560).

[96] Thus, the defendants submitted that the claim for both normal and motorised wheelchair should be rejected by this court because if P2 be given good prosthetics that suit him well, P2 can return to the community with those prosthetics.

[97] With the court having allowed the claim for the prostheses and with P2 being a K3 amputee and can walk with prosthetics in a shopping centre at a reasonable speed (pp. 24 to 30 of encl. 118), *ie*, P2 is a community ambulator, the court was initially minded to accept the submissions of the defendant and disallow the claims for both the normal or motorised wheelchair. In other words, both these claims be disallowed.

[98] However, given the extent of P2's disabilities, after giving careful thought to the same, this court allows a one-off normal wheelchair at RM5,000 to allow P2 time to adjust to the use of the prosthetics.

Anti-gravity Chair

[99] PW4 also recommends an anti-gravity chair which has an adjustable system to change the position of any body weight to avoid pressure to his spinal region of the body. This chair is essential for P2 to be used at home. This will alleviate any pressure over his spine and the chair can be adjusted in any position to take away the pressure encroaching his spinal region. This anti-gravity chair costs RM9,000 to RM12,000 and is to be changed once every five years. The maintenance cost is RM300 every year with a total costs of RM165,900.

[100] The defendants put forward the same reasons relied upon for disputing the need for a normal/motorised wheel chair to object to this claim.

[101] For similar reasons as that for disallowing the normal or motorised wheelchairs, this court allows a one-off anti-gravity chair in the sum of RM12,000.

Kinect Cognitive Interactive Therapy

[102] PW4 recommends P2 to undergo kinect cognitive interactive therapy which is designed for recreation with the medical aim to improve proprioception and cognitive skills in people with concentration disabilities, such as in the case of P2. This can promote whole body movement, fitness and physical activity. The hardware costs between RM5,000 to RM6,000 and the software costs between RM1,500 to RM2,000. The maintenance of the hardware cost RM1,000 and for the software, it costs RM500, which is to be done once every two years. Thus, the plaintiffs pray for this court to allow damages for this item in the sum of RM49,250.

[103] The defendant submitted that just as for the claim for a transcutaneous electro-muscular stimulator home kit, for safety reasons, such an equipment ought to be used under the supervision of a rehabilitation physician and it is not suitable to be used at home and that this treatment can be provided by the Government facilities.

[104] This court accepts the submissions of the defendant and disallows this claim.

Modified Washroom With Accessories

[105] The plaintiffs submitted that P2's washroom must be modified to ensure safety, accessibility and dignity in performing basic daily hygiene tasks since he can no longer manage in a standard washroom due to his severe physical limitations. It is submitted that the regular washroom poses a serious risk of falls and further injury. Moreover, the absence of appropriate support structures makes it nearly impossible for him to use the facilities independently. PW4 recommended and calculated the cost of modifying the washroom at RM10,000 inclusive of toilet bowl with accessories, railings and changing chair with a maintenance cost of RM500 every five years. The total cost is calculated to be RM15,500.

[106] The defendant submitted that this claim should be dismissed by this court. It was pointed out that PW4 in his report at PWS-4A testified that P2's house is not friendly for disabled people but, nevertheless, there is nothing in his report to show that P2 cannot access to any part of his house.

[107] This court finds the claim for this item to be reasonable. It is now common to see special washrooms made available in public areas for the disabled where the size of the washroom is bigger with grab handles installed. Wherefore, the court allows this claim of RM10,000 as a one-off claim without the maintenance costs as it can be used by the other members of the family too.

Modified Steering Wheel

[108] The plaintiffs submitted that public transportation is not a viable option for P2 as most public transportation in Malaysia is not completely disabled friendly. Furthermore, P2 needs to bring his wheelchair wherever he goes, and, thus, a modified steering system is needed to assist him in living a normal life. PW4 at p. 30 of his report in PWS-4A recommends a modified steering wheel to suit a one-hand drive for the disabled where the handle and gear system is mounted on the steering. A modified steering wheel cost around RM10,000 to RM15,000 to be changed every five years. The maintenance will cost RM300 yearly, and thus, the plaintiffs pray for a total sum of RM181,500 from this court.

[109] DW1 in her report (at p. 16 of encl. 135) proposed a figure of RM3,000 to RM4,000 as the quantum for damages in the event P2 wishes to drive in future. The defendant referred to the case of *Hasniyati Hassan & Anor v. Kerajaan Malaysia* [2022] 7 CLJ 565; [2022] 10 MLJ 469; [2022] 5 MLRH 675; [2022] 3 AMR 726 where the court awarded RM4,000 for modifying a car due to amputation. Thus, it is submitted RM4,000 is reasonable and with the need to change the same for five times, the defendant offers a sum of RM20,000 to be allowed by this court for this proposed item.

[110] For the reasons given by the defendant, the court allows a sum of RM20,000 for this claim.

Lifetime Cost Of A Sports Utility Vehicle ("SUV")

[111] The plaintiffs submitted that this court should allow a lifetime cost of a SUV claimed by P2 based upon a projected life expectancy of 77 years as at 2025. P2 is unable to commute *via* public transport or motorcycle due to his injuries, and, thus, the plaintiffs submitted this claim should be allowed. Calculated from the anticipated date of decision in October 2025, P2 relied upon a multiplier of 55 years with the costs of a SUV pegged at RM150,000 with the need to replace the same 11 times totaling RM1,050,000 (*sic* - it should be RM1,650,000).

[112] The defendant submitted that this claim by the plaintiffs is excessive. Reliance was again placed on the case of *Yang Salbiah* (*supra*) where it was emphasised that damages is meant to put the victim into the position he would be before the accident and must be fair and not excessive. There was no evidence that the plaintiffs has ever owned a SUV before the amputations.

[113] It was pointed out by the defendant that PW4 admitted that his recommendation for a SUV was not in his expert report, and, thus, this is an afterthought.

[114] In my considered view, the claim is indeed excessive as the plaintiffs do not have a car at the moment and it cannot be denied that even able bodied people may find it difficult to purchase and maintain a car. With the claims for the prosthetics having been allowed, and if the plaintiffs were to purchase a car, they have the claim to have the steering wheel modified and, thus, this claim is denied.

The House

[115] PW4 testified that he visited P2's residence (in p. 15 of PWS- 4A in encl. 118) and confirmed that P2 lives in a flat on the tenth floor, with two rooms and one bathroom. In his assessment, PW4 found that P2 is unable to climb stairs and relies on the lift. PW4 recommends that P2 move to a landed property to help reduce his suicidal tendencies and to provide more space for ambulation. There may also be occasions where he would need to rely on the stairs, which he is unable to use as there are no railings on the right side for support. A landed property would, therefore, offer a safer and more accessible living environment.

[116] P1 testified that he has not moved to a terrace house as he cannot afford it due to the fact that he has lost his job and suffers financial constraints. P1 testified that a terrace house cost about RM700,000 to RM800,000. P1 says he will sell his existing flat and that his flat is currently valued at RM190,000 with an outstanding loan balance of RM19,000 owing to the bank. The plaintiffs submited that this is a reasonable effort to mitigate his losses and improve the living conditions of P2.

[117] Therefore, the plaintiffs submitted that this court must allow a sum of RM591,000 to purchase a landed house after deducting RM190,000 from the prospective sale of P2's current house.

[118] Placing reliance on *Yang Salbiah* (*supra*), the defendant submitted that this claim for a landed house by the plaintiffs is unreasonable. There was no evidence before the court that a house will stop P2 from having suicidal intentions, and, thus, this claim should be dismissed as it is excessive in nature.

[119] Under cross-examination, P1 agrees that there are other ways to commit suicide apart from jumping from their ten-storey building and that he cannot predict whether P2 will be suicidal even with a good prosthetics.

[120] In my considered view, the claim is excessive and P1 ought to be sent for counselling sessions instead where his avowed suicidal tendencies are concerned. In my considered view with the other claims having been allowed, this will go a long way to assist the plaintiffs to manage the mental strength of P2.

Future Education

[121] PW4 stated that P2 was on medical leave until December 2020 and due to his disabilities, he did not attend school as his classroom is on the third floor without any lift facilities. The plaintiffs submitted that P2 was subjected to ridicule and humiliation by both friends and relatives, which significantly worsened his psychological state.

[122] P1 also testified during cross-examination that he does not intend to send P2 to pursue further studies at any Government institution due to the requirement for students to reside on campus while P2 needs his assistance for daily functioning.

[123] PW4 testified that a year's course at a skill training institute will cost RM15,000 and recommends it for P2's future education.

[124] The defendants submitted that P2 failed to attend any free training provided by the Government. Therefore, this claim should not be allowed by this court.

[125] The defendants submitted that no evidence was led to show that comparative tests had been undertaken on P2's cognitive ability pre and post amputations.

[126] This court observed that P2 took a long time to answer why he wants to go to a private centre rather than a free Government institution such as Pusat Pemulihan Dalam Komuniti at Serdang for the disabled.

[127] As there are facilities available for the disabled which are provided free of charge by the Government, this court disallows this claim.

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P1's Loss Of Earnings And Future Home Care

[128] The plaintiffs referred to the evidence given by P1 (PSW-5 pp. 2 & 3) and submitted that prior to P2's admission to Hospital Ampang, P1 worked as a lorry driver and salesman with Narayana Moorthy Flour Mill Sdn Bhd earning a monthly fixed income of RM1,900 and a monthly B commission of approximately RM3,000. During cross-examination, P1 confirmed that his monthly salary was around RM5,000. The salary of RM1,900 is after deductions of employees provident fund contributions. During cross-examination, P1 confirmed that when P2 was admitted to ICU on 23 January 2019, he applied for leave from him employer but it was C declined. He ceased employment because he had to take care of P2.

[129] The plaintiffs referred to the Supreme Court case of *Marappan Nallan Koundar & Anor v. Siti Rahmah Ibrahim* [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174; [1990] 1 MLJ 99; [1989] 1 MLRA 267, where it was held that the cost of future care should not be any less if the person concerned were to be D looked after at home instead of an institution as compensation can be given for the services rendered by the parents. There the court awarded RM350 per month in the year of 1990. Thus, after taking into account the inflation as a factor, the plaintiffs submitted that this court should adjust the amount to RM5,000 per month as the cost of care currently provided by P1 till P1 E reaches the age of 77 years of age as at 2051.

[130] In the future, when P1 is no longer able to provide such care due to his age, decline in his health or death, P2 will require the assistance of a domestic helper. Thus, the plaintiffs submitted that the same amount of RM5,000 per month to engage a domestic helper or nurse ought to be F awarded. The particulars of the plaintiffs' claims are as follows:

> P1's care for P2 with 32 years as the multiplier - RM5,000.00 x 12 months x 32 years = RM1,920,000.00
>
> P2 in the year 2051 would be at the age of 48. Therefore, the multiplier G for a helper would be 29 years - RM5,000.00 x 12 months x 29 years = RM1,740,000.00

[131] Therefore, the plaintiffs claim from this court a total of RM3,660,000 for P1's loss of earnings and P2's future home care.

[132] The defendants submitted that in paras. 113 until 117 of the amended H statement of claim it was pleaded that P1's daily income to be RM2,800 per month. The defendant referred to the case of *Iftikar Ahmed Khan v. Perwira Affin Bank Bhd* [2018] 1 CLJ 415; [2018] 2 MLJ 292; [2018] 1 MLRA 202; [2017] 8 AMR 517 and submitted that the plaintiffs are bound by their pleadings.

I

[133] As for costs of future home care, the defendant submitted it should not be allowed by this court since P2 would not need such assistance in the future.

[134] From the evidence led and the submissions presented, I make the following findings:

(i) the plaintiffs have in fact deleted the claim by P1 for loss of earnings and substituted it with a claim for care for P2 (see encl. 271 amended BOP pp. 79 & 80) and by reason thereto, this claim should not be allowed;

(ii) in any event, P1 was not able to produce any documentary evidence to prove his earnings which could have been easily done with the production of his income tax, bank account or EPF statements but none were produced; and

(iii) further, his evidence on his earnings were contradictory. On the one hand, he had originally pleaded it to be RM2,800 per month but it was then deleted by way of amendments and in his testimony, he said his gross monthly income with his commission was RM3,000 per month but no documentary evidence was produced to support the same. Although he said his employer has passed away, I observed that his employer's name is said to be Narayana Moorthy Flourmill Sdn Bhd (PWS-5 at Q&A 3 & 6) which would suggest that it is a private limited company rather than an individual. Thus, P1's evidence on his earnings have no credibility.

[135] However, I observed that P2 is obviously dependent upon P1 for his daily needs and is a source of comfort to P2 for the mishaps that had befallen him and, thus a claim for someone to care for him for a period until P2 has become accustomed to his new prosthetics and become more independent would be reasonable. I am of the considered opinion, that in this regard, a period of five years would be more than sufficient. I accept the costs for the home care to be RM3,000. With a multiplier of five years, it would amount to RM30,000 x 12 months x 5 years which would amount to RM180,000.

P2's Loss Of Earning Capacity

[136] The plaintiffs submitted that the law recognises that earning capacity is not confined to current employment status alone but it refers to a person's ability and opportunity to earn income during his economic life in the future. The plaintiffs referred to the case of *Ong Ah Long v. Dr S Underwood* [1983] 2 CLJ 198; [1983] CLJ (Rep) 300; [1983] 2 MLJ 324 [1983] 1 MLRA 154; and submitted that if there is no satisfactory evidence of future loss of earnings but the court is satisfied that the plaintiffs have suffered a loss of earning capacity, it will award him damages for his loss of capacity as part of the general damages for disability and not as compensation for future loss of earnings. Thus, the plaintiffs prayed for a claim of RM1,320,000 to be awarded by this court.

[137] The defendant cited s. 28A(2)(c)(i) of the Civil Law Act 1956 and submitted that this claim should not be allowed since P2 was not earning anything at the material time.

[138] In *Ong Ah Long* (*supra*), the Federal Court allowed a sum of RM45,000 because although the plaintiffs could not produce any satisfactory evidence on his loss of earnings, there was evidence that he could do some light work. In this case, there is no evidence at all that P2 was income generating. Thus, unfortunately for P2, and as submitted by the defendant, the provisions of s. 28A(2)(c)(i) of the Civil Law Act 1956 applies, and this court is constrained to dismiss this claim.

Special Damages (Other Items)

[139] The plaintiffs prayed for the total sum of RM113,086.40 (encl. 226) for all the specialist reports that were adduced during the trial. The defendant submitted that the costs for the specialist reports were not supported by any official receipt, and thus, these claims should not be allowed. Instead, the defendant submitted that the costs for the specialist reports, if any, should be claimed as part of the costs for this action. No authorities were cited by the defendant in support of this submission, and no evidence was led by the defendant to rebut the evidence, *ie*, the invoices produced by the plaintiffs.

[140] In *Chong Nge Wei & Ors v. Kemajuan Masteron Sdn Bhd* [2022] 4 CLJ 833; [2022] 4 MLRA 296; [2022] 3 MLJ 135 at paras. 62 and 63, it was held that a quotation is sufficient proof of damages without having to expend the monies for repairs, if there is no rebuttal evidence led.

[141] In the circumstances, I allow the claim for special damages in the sum of RM113,086.40.

Aggravated Damages

[142] The plaintiffs referred to the case of *Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor And Another Appeal* (*supra*) and submitted that this is a fit and proper case for this court to award aggravated and exemplary damages of RM1,000,000 respectively. The plaintiffs submitted that the defendant offered an unrealistic figure for settlement after all the pain and suffering for all the amputations, erectile dysfunction, chronic pain, compromised immunity, major depression with anxiety and suicidal tendencies that P2 had to suffer.

[143] The defendants referred to the case of *Chua Kay Hock & Anor v. Lee Hoon Poi* [2022] 7 CLJ 669; [2022] 6 MLJ 88; [2022] 5 MLRA 625 and submitted that this claim should not be allowed since there is no evidence to justify this claim. The defendant submitted that the defendant through the doctors and medical personnel had all tried their best to treat P2 without any intention to cause him any harm. The amputations were done to save P2's life due to the onset of gangrene. Reliance was placed on the case of *Hasniyati Hassan & Anor v. Kerajaan Malaysia* [2022] 7 CLJ 565; [2022] 10 MLJ 469; [2022] 5 MLRH 675; [2022] 3 AMR 726, where it was held that aggravated damages are not allowed in medical negligence.

[144] From the evidence led and from the conduct of this action, I find that: A

(i) on the assertion that the defendant had admitted liability in this case, very late in the day, I find that this a neutral factor, because the consent judgment on liability saves the plaintiffs from having to prove their case on liability;

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(ii) proceedings pertaining to mediation which is unsuccessful cannot be relied upon as it is meant to be voluntary and are privileged from disclosure;

(iii) the complaints about the wrong treatment being meted out falls within the realm of negligence and general damages because aggravated C damages is for conduct that causes distress and anguish over and on top of the pain and suffering caused by the negligent treatment received; and

(iv) however, the relevant doctor ought not to have uttered the remark that P2 was suffering from HIV in the presence of third parties who have no D business to know of the same and as it turned out, P2 was not suffering from such an illness and causing the plaintiffs and their family, unnecessary humiliation and distress, see *Dato' Stanley Issacs (Suing By Himself And As The Administrator Of The Estate Of To' Puan Suzanne Thomas, Deceased) v. The Government Of Malaysia & Ors* [2019] 1 CLJ 626; [2019] 8 MLJ 1672 although the extent of distress caused in E *Dato' Stanley Isaacs'* case was much more severe and extreme.

[145] This court awards a sum of RM20,000 by way of aggravated damages with the hope that it sends a message that those giving medical treatment will be more sensitive to their surroundings and the patient, which is described as "bedside manners" amongst doctors, when discussing the ailments of the F patient with the patient, and in particular, minors and their family members.

Exemplary Damages

[146] The plaintiffs referred to the case of *Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals* [2018] 1 CLJ 585; [2018] G 3 MLJ 184; [2017] 6 MLRA 635 and submited that exemplary damages ought to be awarded by this court and they seek a figure of RM1,000,000 on the ground that the wrong is committed by the Government, and which severely affected P2's daily life.

[147] The defendant referred to the case of *Rookes v. Barnard* [1964] AC 1129 H that was followed in the case of *Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals* [2018] 1 CLJ 585; [2018] 3 MLJ 184; [2017] 6 MLRA 635 to submit (encl. 317 para. 197 and 199) that exemplary damages are for cases where the defendant had acted beyond ordinary negligence such as conduct that is malicious, oppressive, or grossly negligent, I and that this is not the case with P2, and thus, this claim should not be allowed by this court.

[148] With respect, I disagree with the submissions of the defendant that exemplary damages may be awarded in cases of gross negligence. As I had occasion to observe in *Vasantha Kumari Supramaniam & Anor v. Dr Pakirisamy Baskaran & Ors* [2024] CLJU 2891; [2025] 2 MLRH 736 at para. 36 that in *Rookes v. Barnard* [1964] AC 1129 and which was adopted by the Federal Court in *Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeals* [2021] 9 CLJ 179; [2021] 5 MLJ 937; [2021] AMEJ 143 at paras. [100] to [104], that exemplary damages is to be awarded in three categories of cases, *to wit*, when it is statutorily provided for, when the loss is occasioned by the oppressive, arbitrary or unconstitutional conduct of Government servants and when the defendant's conduct was profit orientated.

[149] In my considered opinion, the case of *Ketua Polis Negara & Ors v. Nurasmira Maulat Jaafar & Ors* (*supra*) can be readily distinguished as the three appeals considered and decided by the Federal Court involved deaths brought about by the police, with two cases involving death in custody and one where the deceased was shot by the police. In the instant case, the defendant through her medical personnel were trying to save P2, *albeit* negligently, and there was no evidence to show that the suffering of the plaintiffs, in particular P2 was brought about by oppressive, arbitrary or unconstitutional conduct of the defendant's servants.

[150] Wherefore, I disallow the claim by the plaintiffs for exemplary damages.

Costs

[151] Learned counsel for the plaintiffs prayed for a sum of RM500,000. In support thereof, the plaintiffs cited and referred to the case of *Yusnita Johari v. Dr Jerilee Mariam Khong & Ors* [2023] 7 CLJ 89; [2013] MLJU 686 where the High Court held that it is a well-recognised fact that medical negligence litigation is difficult, complex, time-consuming, often involves novel questions of law and fact and that medical negligence litigation is expensive; and in *Farah Ahmed Naji Al-Sahhaf v. Dr Lee Weng Seng & Ors* [2022] CLJU 3340; [2022] 1 LNS 3340; [2017] MLJU 1725, the High Court awarded a sum of RM250,000 for getting up for both liability and quantum for a medical negligence case involving a brain-damaged infant with the defendants admitting liability well before the trial.

[152] Learned federal counsel for the defendant offered a sum of RM10,000 on the grounds that the defendant had admitted liability which would have saved a lot of this Honourable Court's time and reduced the burden of the court in having to analyse complex issues as submitted by learned counsel for the plaintiffs.

[153] I accept that the common submissions of both learned counsel and learned federal counsel that medical negligence litigation is time consuming and can be complex. However, the stakeholders ought to reconsider the high costs involved to allow easier access to justice. In the instant case, I acknowledge the assistance given to this court in the form of the written submissions presented, the seniority of learned counsel and the specialised skill that has to be brought to bear in this case by learned counsel for the plaintiff, the learned senior federal counsel and learned Federal Counsel.

[154] However, given the substantial reduction in the amount awarded compared to that claimed, I award costs of RM200,000 to be paid by the defendant to the plaintiffs.

Conclusion

[155] Wherefore, in summary, the court awards a total quantum of RM7,400,883.19 for damages as tabulated below:

i)	Right trans-tibial amputation	RM80,000.00
ii)	Left trans radial amputation	RM70,000.00
iii)	Left foot sole debridement	RM5,000.00
iv)	Left foot toes amputation	RM40,000.00
v)	Right leg stump corrective surgery	RM18,000.00
vi)	P2's Mental, Psychological, Cognitive and Behavioral Disorder	RM85,000.00
vii)	Erectile dysfunction	RM80,000.00
viii)	P2's ED Future treatment	RM74,880.00
ix)	Penile Prosthesis Implantation	RM140,000.00
x)	Prosthetics	RM6,434,266.79
xi)	Lumbar Corset	RM450.00
xii)	Firm Mattress	RM13,200.00
xiii)	Normal Wheelchair	RM5,000.00
xiv)	Modified Washroom and Commode with accessories	RM10,000.00
xv)	Modified Steering Wheel	RM20,000.00
xvi)	Anti-gravity chair	RM12,000.00
xvii)	P2's future home care	RM180,000.00
xviii)	Special Damages (Other Items)	RM113,086.40
xix)	Aggravated damages	RM20,000.00
	TOTAL	**RM7,400,883.19**

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(xx) pre-judgment interest on the special damages and all other awards of damages at the rate of 2.5% pa from 11 December 2020 (the date the writ and statement of claim was filed) until one day before judgment;

(xxi) post judgment interest at 5% p.a. on the judgment debt from the date of judgment until the date of full settlement; and

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(xxii) costs in the sum of RM2000 is to be paid by the defendant to the plaintiff for this action. As the defendants are the Government, the costs is not to be subject to allocatur fee.

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